

Senate Bill No. 253

CHAPTER 190

An act to amend Sections 3540.1, 3544.1, and 3544.7 of the Government Code, relating to public school employees.

[Approved by Governor August 3, 2003. Filed with
Secretary of State August 4, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 253, Cedillo. Public school employees: confidential employees: employee organizations.

Under existing law, public school employees have the right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Existing law excludes a confidential employee from the definition of "public school employee" or "employee." Existing law defines the term "confidential employee" to mean any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

This bill would revise the definition of "confidential employee" to mean any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

Existing law provides that an employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with the public school employer and asking the public school employer to recognize it as the exclusive representative. Existing law requires the public school employer to grant the request for recognition, unless, among other things, the public school employer desires that a representation election be conducted.

This bill would delete the authority of a public school employer to withhold recognition of an employee organization by requiring that a representation election be conducted. The bill, in addition, would make conforming and related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) “Board” means the Public Employment Relations Board created pursuant to Section 3541.

(b) “Certified organization” or “certified employee organization” means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) “Confidential employee” means any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

(d) “Employee organization” means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. “Employee organization” shall also include any person of the organization authorized to act on its behalf.

(e) “Exclusive representative” means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) “Impasse” means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) “Management employee” means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) “Meeting and negotiating” means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, is not subject to



subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) “Organizational security” is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement may not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) “Public school employee” or “employee” means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) “Public school employer” or “employer” means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) “Recognized organization” or “recognized employee organization” means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) “Supervisory employee” means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 2. Section 3544.1 of the Government Code is amended to read:



3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544, unless any of the following apply:

(a) The public school employer doubts the appropriateness of a unit.

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. The evidence shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation exists and the board shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) of this section applies.

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

SEC. 3. Section 3544.7 of the Government Code is amended to read:

3544.7. (a) Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct inquiries and investigations or hold any hearings it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearing. However, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation exists pursuant to subdivision (b) of Section 3544.1, it shall order that an election be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: “no representation.” No voter shall record more than one choice on his or her



ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) An election may not be held and the petition shall be dismissed if either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

